

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF SOUTH CAROLINA  
ANDERSON/GREENWOOD DIVISION

|                                  |   |   |
|----------------------------------|---|---|
| Brian T Roberts,                 | ) | C/A No.: 8:15-cv-00076-TMC-JDA          |
|                                  | ) |   |
| Plaintiff,                       | ) |   |
|                                  | ) |   |
| vs.                              | ) | <b><u>REPORT AND RECOMMENDATION</u></b> |
|                                  | ) | <b><u>OF MAGISTRATE JUDGE</u></b>       |
| Carolyn W. Colvin,               | ) |   |
| Commissioner of Social Security, | ) |   |
|                                  | ) |   |
| Defendant.                       | ) |   |

This matter is before the Court on Plaintiff's motion for default judgment pursuant to Rule 55(d). [Doc. 16.] Plaintiff is proceeding pro se. Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(B), and Local Rule 73.02(B)(2)(e), D.S.C., this magistrate judge is authorized to review all pretrial matters in cases filed by individuals proceeding pro se and to submit findings and recommendations to the District Court.

Plaintiff filed a motion for default on June 29, 2015. [Doc. 16.] The Commissioner filed a response in opposition on July 8, 2015. [Doc. 18.] Thus, Plaintiff's motion is ripe for consideration.

Plaintiff contends that his action was filed on January 7, 2015 and served on the Commissioner on February 20, 2015, making the Commissioner's responsive pleading due on June 24, 2015. [Doc 16 at ¶¶ 1--2.] Plaintiff argues that the Commissioner failed to file an answer and, thus, Plaintiff is entitled to default judgment and the relief sought in the original complaint. [*Id.* at ¶ 4.] The Commissioner argues that it was served with the summons and complaint on February 25, 2015, making its response due 120 days after service, on June 25, 2015. [Doc. 17 at 1.] The Commissioner contends its answer was timely filed on June 25, 2015 and, thus, Plaintiff's motion for default should be denied. [*Id.*]

Under Rule 55(d), Plaintiff is entitled to a default judgment against the United States "only if the claimant establishes a claim or right to relief by evidence that satisfies the court." Fed.R.Civ.P. 55(d). The clear policy of the Federal Rules of Civil Procedure is to discourage judgment by default and to encourage disposition of claims on their merits. See *Reizakis v. Loy*, 490 F.2d 1132 (4th Cir.1974) and *Tolson v. Hodge*, 411 F.2d 123 (4th Cir.1969). Upon consideration, the Court notes that the summons in this matter was served on the Commissioner on February 25, 2015 and, pursuant to Local Rule 83.VII.03, the answer was due on June 25, 2015. [Doc. 10.] Accordingly, the Commissioner's answer was timely.

Wherefore, based on the above, the Court recommends that Petitioner's motion for default judgment be DENIED.

IT IS SO RECOMMENDED.

s/Jacquelyn D. Austin  
United States Magistrate Judge

September 3, 2015  
Greenville, South Carolina